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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/730,346

12/08/2003

Edward Russell Cox

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THE PROCTER & GAMBLE COMPANY
Global Legal Department - IP
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EXAMINER

MATTISON, LORI K

ART UNIT

PAPER NUMBER

1619

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/730,346	Applicant(s) COX ET AL.	
	Examiner LORI MATTISON	Art Unit 1619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/29/2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2, 4-7, 9-11, 55-59 is/are pending in the application.
- 4a) Of the above claim(s) 55-59 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7 and 9-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1, 2, 4-7, 9-11, and 55-59 are pending. Claims 3, 8, and 12-54 are cancelled. Claims 55-59 are withdrawn.

2. Applicant's amendments to claims 1, 2, 4, and 5 filed 10/29/2009 are acknowledged.

Claims 1, 2, 4-7, and 9-11 are pending and examined on the merits.

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Objections and rejections not recited in this action are withdrawn.

5. References not included with this Office action can be found in a prior action.

Claim Rejections - 35 USC § 112

Claim 4 remains rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as his invention.

Claim 4 depends from cancelled claim 3. Therefore, claim 4 is indefinite.

To enable a more compact prosecution, claim 4 has been examined as if it depends from instant claim 1.

Appropriate correction of instant claim 4's dependency is required.

Claim Rejections - 35 USC § 103

Interpretation of Instant Claim 1: Instant claim 1 requires that the composition be edible and comprise soluble minerals consisting of zinc, manganese, tin, copper, and mixtures thereof and a phosphate component. A

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portion, or all, of the mineral and phosphate components coat the surface of the edible composition. The edible composition must also comprise a source of protein. With regard to the phosphate and soluble components being present in an "effective amount" for use as an oral medicament, based upon applicant's description at page 5, lines 10-20 of the instant specification, an effective amount is any amount sufficient to provide a significant improvement of the relevant treatment of the companion animal, yet low enough to avoid adverse effects, commensurate with a reasonable benefit/risk when used in the manner of the present invention. The specific effective amount may vary with such factors as the particular condition being treated (instant specification, page 5, lines 10-20). Therefore, an "effective amount" has been reasonably interpreted as ANY amount sufficient for treating hunger in the feeding of the companion animal. With regard to the composition being "nutritionally balanced" dog or cat food, based upon Applicant's definition, the claim has been reasonably interpreted to include *any* food product (including table scraps) that have nutrients to sustain life in proper amounts and proportion based on recommendations of *any* recognized authority in the field of companion animal nutrition (including holistic practitioners, animal chefs, and medical practitioners). The limitation that part of the mineral component is dissolved in the saliva of a dog or cat during mastication has been interpreted that a part of the mineral component is water soluble as saliva is aqueous.

Claims 1, 2, 4-7, and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 4,247,562 (Bernotavicz, 1981), WO 01/17366 (Young, 2001), US Publication No. 2004/0076735 (Lacombe, 2004). Dzanis as published in the *American Institute of Nutrition* in 1994, and the Merck Veterinary Manual 8th Edition.

Bernotavicz teaches a moist pet food (i.e. edible composition) with blood chunks (protein) and fluid gravy system. Bernotavicz teaches that the high moisture gravy is fortified with vitamins and minerals which are sufficient to provide a nutritional pet food (i.e. an effective amount of use as an oral medicament against starvation; column 4, lines 5-15; column 3, lines 50-55; instant claim 1). The fortified gravy supplies 25-100 percent of the pet's vitamin and mineral requirements as indicated by the National Research Council's (NRC) recommendations for dogs and cats (column 5, lines 60-end; column 6, lines 1-5; instant claims 1 and 4). Bernotavicz teaches that the minerals such as copper, zinc, phosphorous, and manganese comprise the gravy (column 5, lines 25-45; instant claims 1 and 11). Bernotavicz teaches inclusion of food thickening agents such as the cross-linking agent sodium trimetaphosphate, a polyphosphate, in the gravy composition (column 4, lines 50-60; instant claims 1 and 10). The artisan of ordinary skill, at the time the invention was made, would have recognized that the sodium ion of the sodium trimetaphosphate is effective in treating electrolyte imbalances and arrhythmias. The gravy is taught to include **any** suitable ingredients which impart the desired flavor to the gravy (column 4,

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lines 45-55). Example IV embodies use of the palatability enhancer, tetrasodium pyrophosphate, in the yellow cream sauce gravy (column 9, lines 15-25; instant claim 9). The blood chunks are added to the gravy (i.e. the gravy "coats" the blood chunks; column 4, lines 5-15; instant claims 1 and 4).

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Bernotavicz does not teach that the minerals which fortify the gravy are soluble as set forth by instant claim 1.

Bernotavicz does not teach that the mineral component comprises the zinc, copper, and manganese salts recited by the Markush groups set forth by instant claim 6.

Bernotavicz does not teach that the amount of zinc ion is at least 0.001%, the amount of copper ion is at least 0.0005%, and the amount of manganese ion is at least 0.001% as set forth by instant claim 2.

Bernotavicz does not teach that the amount of zinc ion is from about 0.001% to 1%, the amount of copper ion is from about 0.0005% to 0.1% as set forth by instant claim 7.

Bernotavicz does not teach that the composition comprises at least 0.02% of the mineral component by weight of the composition as set forth by instant claim 5.

Young teaches a nutritional composition for pets which includes a source of zinc (page 2, lines 10-15). The zinc may be provided as zinc sulfate (page 4, lines 10-15). Young teaches that the nutritional composition is formulated as a canned pet food, or a semi-moist pet food (page 3, lines 20-30).

Lacombe teaches a kosher pet food for dogs and cats (title; page 1, paragraph 1). The pet food may be moist for canned purposes (page 2, paragraph 25). The pet food may comprise minerals such as copper sulfate and manganese sulfate (page 2, paragraph 32)

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Dzanis teaches that the Association of American Feed Control Officials (AAFCO) profiles have replaced the NRC recommendations as the recognized authority in the United States (Abstract).

Gierhart teaches a flavor composition for pet food (title).

The Merck Veterinary Manual 8th Edition teaches that the minimum nutrient requirement for dogs for zinc, manganese, and copper is 0.012%, 0.0005%, and 0.00073% respectively by weight (page 1626). The sum of these percentages is 0.013% (page 1626). The Merck Veterinary Manual 8th Edition also teaches that AAFCO Nutrient Requirements for dogs require manganese in an amount that is 0.0005% by weight (page 1626). Merck teaches that the AAFCO guidelines for the amount of zinc present in the composition is optimizable with the amount of zinc required ranging from is 0.012% - 0.1 % by weight (page 1626). Merck also teaches that the AAFCO guidelines for the amount of copper present in the composition is optimizable with the amount of copper required ranging from 0.00073% -0.025% by weight of the composition (page 1626). Therefore the amount of the recited minerals can range from 0.01323-0.1255% (page 1626; i.e. at least about 0.02% of mineral component; instant claim 5).

With regard to instant claims 1 and 6, it would have been *prima facie* obvious to a person of ordinary skill in the art at the time the invention was made to have added the soluble mineral salts manganese sulfate, copper sulfate, and zinc sulfate to the gravy of Bernotavicz's pet food composition because Bernotavicz teaches inclusion of copper, manganese and zinc in the gravy

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composition and the combined teachings of Lacombe and Young teach that the water soluble copper sulfate, manganese sulfate, and zinc sulfate salts are suitable minerals for wet/moist dog foods.

With regard to instant claims 2 and 7, it would have been *prima facie* obvious to a person of ordinary skill in the art at the time the invention was made to have modified Bernotavicz gravy composition to comprise zinc ion, manganese ion, and copper ion in an amount of 0.012%, 0.0005%, and 0.00073%, respectively, by weight because AAFCO guidelines require nutritionally balanced dog foods to comprise a minimum of zinc ion, manganese ion, and copper ion in an amount of 0.012%, 0.0005%, and 0.00073%, respectively. The skilled artisan would have been motivated to do so because Bernotavicz expresses a desire to provide a nutritionally balanced animal food composition by teaching that minerals and vitamins should be added as suggested by guidelines of the NRC with the artisan of ordinary skill recognizing that AAFCO requirements are those recognized in the United States. The skilled artisan would have been further motivated to do so in order to provide a nutritionally balanced dog food in order to access and attract American customers who desire to feed their pet nutritionally balanced food.

With regard to instant claim 5, it would have been *prima facie* obvious to a person of ordinary skill in the art at the time the invention was made to have modified Bernotavicz's gravy composition to include a mineral component in an amount of 0.02% because AAFCO guidelines require nutritionally balanced dog foods to comprise copper, manganese, and zinc (i.e. mineral component) in a

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combined amount of 0.01323-0.1255% by weight of the composition. The skilled artisan would have been motivated to do so because Bernotavicz expresses a desire to provide a nutritionally balanced animal food composition by teaching that minerals and vitamins should be added as suggested by guidelines of the NRC with the artisan of ordinary skill recognizing that AAFCO requirements are those recognized in the United States. The skilled artisan would have been further motivated to do so in order to provide a nutritionally balanced dog food in order to access and attract American customers who desire to feed their pet nutritionally balanced food.

Response to Arguments

Applicant alleges in their traverse of the rejection of claims 1, 2, 5, 11, 14 and 15 under 35 USC 102 over Ramaekaers (Reply, page 7, paragraph 2), the rejection of claims 1, 11 and 13-15 under 35 USC 102(b) over Fischer (Reply, page 7, paragraph 3), and the rejection of claims 1,2, 5, 14 and 15 under 35 USC 102(b) over Stitt (Reply, page 7, last paragraph; page 8, paragraph 1), that neither Ramaekaers, Fischer, or Stitt teach a nutritionally balanced dog or cat food composition (Reply, page 7, paragraph 2; page 7, paragraph 3; page 7, last paragraph; page 8, paragraph 1).

Applicant's arguments with respect to claims 1, 2, 5, 11, 14 and 15 have been considered but are moot in view of the new ground(s) of rejection.

Applicant traverses the rejection of claims 1, 9, 10, 14 and 15 under 35 USC 103(a) over Brunner in view of Merck. Applicant alleges that Brunner fails to

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disclose an amount effective for use as an oral medicament, a source of protein, and a further amount of a phosphate component in which the phosphate component is an effective amount for use as an oral medicament. Applicant further alleges that Brunner fails to disclose that a portion of the soluble mineral component and the phosphate component is coated on the surface of the composition such that a portion of the mineral component is dissolved in the saliva of dogs and cats (Reply, page 9, paragraphs 1-3). Applicant also alleges that the Richar reference adds nothing with respect to the arguments but does teach zinc salts (Reply, page 10, paragraph 4).

Applicant's arguments with respect to claims 1, 9, 10, 14 and 15 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LORI MATTISON whose telephone number is (571)270-5866. The examiner can normally be reached on 8am-6pm (Monday-Thursday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne (Bonnie) Eyler can be reached on (571)272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. M./

Examiner, Art Unit 1619

/Anne Marie Grunberg/

Supervisory Patent Examiner, Art Unit 1661